

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHN R. TORRES,

Plaintiff,

vs.

No. CIV 09-0519 JB/RHS

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S ANALYSIS
AND PROPOSED DISPOSITION AND GRANTING THE MOTION FOR ORDER
AUTHORIZING ATTORNEYS' FEES PURSUANT TO 42 U.S.C. § 406(b)**

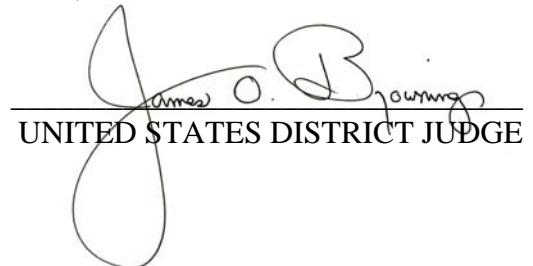
THIS MATTER comes before the Court on the Magistrate Judge's Analysis and Proposed Disposition, filed March 5, 2012 (Doc. 34) ("PFRD"). The PFRD addresses the Plaintiff's Motion for Order Authorizing Attorneys Fees Pursuant to 42 U.S.C. § 406(b), filed October 21, 2011 (Doc. 29) ("Motion"). The Defendant did not file any objections to the PFRD, and the deadline for doing so has passed.

After a de novo review of the Motion, the Court concludes that the Motion is well taken and should be granted for the reasons the Honorable Robert Hayes Scott, United States Magistrate Judge stated in the PFRD. See PFRD at 4-5. Accordingly, the Court will adopt the PFRD and grant the Motion.

When a plaintiff's attorney is awarded fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"), and fees pursuant to 42 U.S.C. § 406(b), counsel must refund the smaller fee amount to the plaintiff. See Gisbrecht v. Barnhart, 535 U.S. 789, 796 (2002). The Court will

therefore order that Plaintiff John R. Torres' counsel refund to Torres the EAJA fee of \$5,215.58 that the Court previously awarded. See Order Authorizing Attorney Fees at 1, filed November 15, 2010 (Doc. 28).

IT IS ORDERED that: (i) the Magistrate Judge's Analysis and Proposed Disposition, filed March 5, 2012 (Doc. 34), is adopted; (ii) Plaintiff's Motion for Order Authorizing Attorneys Fees Pursuant to 42 U.S.C. § 406(b), filed October 21, 2011 (Doc. 29), is granted, and the Social Security Administration must pay Plaintiff John R. Torres' counsel \$16,626.00 from the funds previously withheld by the Social Security Administration; and (iii) Torres' counsel must refund to Torres the Equal Access to Justice Act fee of \$5,215.58 that the Court previously awarded in its Order Authorizing Attorney Fees, filed November 15, 2010 (Doc. 28).



James O. Bownings
UNITED STATES DISTRICT JUDGE

Counsel:

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Albuquerque, New Mexico

Attorney for the Plaintiff

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--and--

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